

## **AGREEMENT WITH OUTSIDE COUNSEL**

**THIS AGREEMENT** ("this Agreement") is between the State of Indiana acting by and through the Office of the Indiana Attorney General (hereinafter the "State") and Susan L. Macey, whose address is 4779 Stansbury Lane, Indianapolis, Indiana 46254 (hereinafter "Counsel").

**WHEREAS**, the State desires to engage Counsel to assist in providing legal services in connection with the backlog project which currently exists in the Medical Licensing Unit (the "Legal Services"), and Counsel represents that it is qualified to provide the Legal Services.

**NOW THEREFORE**, in consideration of the premises and the mutual promises and covenants set forth below, it is agreed by and between the State and Counsel as follows:

- 1. Duties of Counsel.** Counsel shall perform the Legal Services as set forth in the Scope of Work section in the Contract Request Form, marked as Exhibit A, attached hereto and incorporated by reference herein. Pursuant to IC 4-6-5-3, the Indiana Attorney General hereby appoints, employs and hires Counsel to provide the Legal Services. Counsel shall execute its responsibilities by following and applying the highest professional standards. If the State becomes dissatisfied with the work product or the working relationship with any individual assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals, and Counsel shall grant such request.
- 2. Consideration.** Counsel shall be paid at the hourly rate of forty dollars (\$40.00). The maximum amount payable under this Agreement shall not exceed twenty one thousand dollars (\$21,000). Counsel shall submit monthly invoices to the State showing with particularity the date and description of the Legal Services rendered. All payments shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures. In accordance with I.C. 4-13-2-20, the parties acknowledge that no retainer fee has been paid in connection with this Agreement.
- 3. Term.** This Agreement is for a period of six (6) months beginning on October 23, 2002 and ending on April 23, 2003. It may be renewed or extended only by written agreement.
- 4. Access to Files and Records.** The State shall have full, immediate, and unrestricted access to the work product of the Counsel during the term of this Agreement. Upon termination or expiration of this Agreement, Counsel shall, without further request and at no cost to the State, turn over to the State all files relating to the work performed under this Agreement. Counsel acknowledges that it may be required to submit to an audit of funds paid pursuant to this Agreement, and shall maintain at its offices all books, accounting records, and other evidence pertaining to costs incurred and invoiced under this Agreement. Such materials shall be available during the term of this Agreement and for three (3) years from the date of termination or expiration, for inspection by the State or its authorized designee. Copies thereof shall be furnished at no cost to the State if requested.

**5. Assignment.** Counsel shall not assign any part of the Legal Services to be performed under this Agreement to a third party without the State's prior written consent. Counsel may assign its right to receive payments to such third parties as it may desire without the prior written consent of the State, provided that Counsel gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

**6. Changes in Work.** Counsel shall not change scope of the Legal Services to be performed pursuant to this Agreement or undertake additional work on behalf of the State unless authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written agreement.

**7. Compliance with Laws and Licensing Requirements.** Counsel and its partners and employees shall comply with all applicable registration and licensing requirements, rules, standards and codes of conduct governing the practice of law and the transaction of business in Indiana. Counsel shall immediately notify the State if any disciplinary actions are brought against it or any of its attorneys. Counsel certifies, by entering into this Agreement, that neither it nor any of its partners, associates or any other attorney associated with Counsel is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana.

**8. Conflict of Interest.**

**A.** Counsel represents and warrants that, after due and diligent inquiry, it is satisfied that it has no Conflict of Interest (as that term is defined in the Indiana Rules of Professional Conduct) that will preclude it from providing the Legal Services.

**B.** Counsel represents and warrants that it has reviewed and is familiar with the statutes and regulations relating to the ethical conduct of state employees. Counsel certifies that, after due inquiry, no partner or any spouse or unemancipated child of any partner (collectively, an "Interested Party"), is an employee of the State of Indiana. If an Interested Party is an employee of the State of Indiana, Counsel shall provide the State with an opinion by the State Ethics Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the Interested Party does not violate any statute or regulation relating to the ethical conduct of state employees.

**9. Continuity of Services.** Counsel recognizes that the Legal Services provided under this Agreement are vital to the State and must be continued without interruption and that, upon expiration or termination of this Agreement, a successor, either the State or another Counsel, may continue them. Counsel shall use its best efforts and cooperation to effect an orderly and efficient transition to a successor, and shall be reimbursed for all reasonable transition costs.

**10. Disputes.**

**A.** Counsel agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should Counsel fail to continue to perform its responsibilities as regards all non-disputed work, any

additional costs incurred by the State or Counsel as a result of such failure shall be borne by Counsel, and Counsel shall make no claim against the State for such costs.

B. The parties agree to resolve disputes through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to Counsel and the Office of the Attorney General within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

C. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for Counsel to terminate this Agreement, and Counsel may bring suit to collect these amounts without following the disputes procedure contained herein.

**11. Drug-Free Workplace.** As required by Governor's Executive Order No. 90-5 dated April 12, 1990, Counsel certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Counsel's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) Counsel's policy of maintaining a drug-free workplace; (3) any available drug consulting, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A), above, that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify Counsel of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is

convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**12. Funding Cancellation.** When the director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**13. Governing Laws.** This Agreement shall be construed in accordance with, and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**14. Indemnification.** The parties agree and acknowledge that Counsel's private practice is devoted exclusively to alternative dispute resolution and that she does not carry, and is not required to carry, legal malpractice insurance. The parties further agree that Counsel will not appear in any court on behalf of the State, and that her duties under this agreement are limited solely to those set forth on Exhibit A. Accordingly, the State shall not require indemnification from Counsel.

**15. Independent Contractor.** Counsel and the State are acting in their individual capacities and not as employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees of the other party. Counsel shall be responsible for providing all necessary unemployment and worker's compensation insurance for its employees.

**16. Nondiscrimination.** As required by IC 22-9-1-10 and the federal Civil Rights Act of 1964, Counsel shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or in any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Acceptance of this Agreement signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

17. **Notice to Parties.** Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses by U.S. first class mail, postage prepaid.

- A. Notice to the State shall be sent to:  
Sheila O'Bryan McGrath  
Office of the Attorney General  
402 W. Washington St., ICGS 5<sup>th</sup> Fl.  
Indianapolis, IN 46204
- B. Notice to Counsel shall be sent to:  
Susan L. Macey  
4779 Stansbury Lane  
Indianapolis, IN 46254

18. **Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 *et seq.*, IC 34-54-8-5, and IC 34-13-1-6.

19. **Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions.

20. **Taxes.** The State of Indiana is exempt from state, federal and local taxes. The State will not be responsible for any taxes levied on Counsel as a result of this Agreement.

21. **Termination.** This Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be affected by delivery to the Counsel of a Termination Notice at least fifteen (15) business days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The State will not be liable for services performed after effective date of termination. Counsel may terminate this Agreement as provided by Rule 1.16, *Indiana Rules of Professional Conduct*.

22. **Travel.** Expenditures made by Counsel for travel will be reimbursed by the State at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular (#97-1.1).

23. **Waiver of Rights.** No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

**24. Binding Authority; Non-Collusion and Acceptance.** The undersigned attests, subject to the penalties for perjury, he/she has been duly authorized to execute this Agreement on behalf of the entity designated below, and that he/she has not, nor has any other partner, associate, member, employee, representative, agent, or officer of the entity designated below, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement, other than that which appears upon the face of this Agreement.

THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, Counsel and the State by their duly authorized representatives have executed this Agreement as of the dates set forth below.

By: Susan L. Mace

Title: Counsel

Date: 10/24/02

Indiana Office of the Attorney General

By: [Signature] (for)  
Stephen Carter, Attorney General

Date: 10/25/02

Approved by  
DEPARTMENT OF ADMINISTRATION

By: [Signature] (for)  
David Perlini, Commissioner

Date: 11/4/02

Approved by  
STATE BUDGET AGENCY

By: [Signature] (for)  
Marilyn Schultz, Director

Date: - - 0 -

Approved As To Form And Legality:

By: [Signature] (for)  
Stephen Carter, Attorney General

Date: 11-12-02

## EXHIBIT A

OFFICE OF THE ATTORNEY GENERAL  
CONTRACT REQUEST FORM

\*\*\*\*\*The Advisory Section will draft a contract **after** receiving this completed form. Only this form may be used to initiate contracts. All information on this form is mandatory and must be filled in. **Vendor/contractor prepared forms cannot be used.** Any legally acceptable standard clauses or requirements of vendor/contractor will be incorporated into the Office of the Attorney General standard contract format. Only one original copy of the contract will be circulated for signature and duplicates can be made **after** processing.

1. **INDIVIDUAL PREPARING REQUEST:** Shila O'Bryan McGrath PHONE NO. 233-2351

2. **TYPE OF CONTRACT:** (please circle)

Professional Services

Expert Witness

**Legal Counsel**

Lease

3. **NAME OF CONTRACTOR:** Susan L. Macey

4. **ADDRESS AND PHONE NO.:** 4779 Stansbury Lane  
Indianapolis, IN 46254  
(317) 280-0012

5. **TAXPAYER ID # (Attach W-9 if a new vendor)** 206-46-1921

6. **HOURLY RATE (if applicable):** \$40/hr

7. **MAXIMUM \$ AMOUNT OF CONTRACT (State amount and how determined):** \$21,000

8. **MATTERS/CASES INVOLVED AND CAUSE NUMBERS (if applicable):** N/A

9. **SCOPE OF WORK (Provide a COMPLETE description of services to be performed):**

Vendor will provide managerial and organizational services to the Medical Licensing Section for the Boarding Project, which encompasses investigation and prosecution of disciplinary complaints against licensed medical professionals.

10. **START DATE OF WORK (All contract requests must have start date.):** 10/23/02

11. **TERM (no more than 4 years):** 6 months Requested End Date: 4/23/03

12. **METHOD OF VENDOR /CONTRACTOR SELECTION:**

Position was posted; Contractor's background as former judge and attorney made her an excellent fit for the position.

13. **JUSTIFICATION: (Provide justification for vendor selection, determination of price reasonableness and other applicable information. Attach separate sheet if needed.)**

Contract rate is well below market, and over 10% below rate for counsel in other Medical Licensing project. Vendor's years of experience and background would merit

14. **Other Vendors Contacted and Rates:** a much higher contract rate

Mike Klinglin \$50/hr

Approved by:

Chief Counsel:

Date

Controller:

Date

2260-103000 Consumers Lit